

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

IN RE: . Chapter 11
W.R. GRACE & CO., .
et al., . Case No. 01-01139 (JKF)
Debtors. . Jointly Administered
. Feb. 27, 2012 (9:01 a.m.)
. (Wilmington)

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE JUDITH K. FITZGERALD
UNITED STATES BANKRUPTCY COURT JUDGE

Appearances:

For the Debtors: Kathleen P. Makowski, Esq.
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For the Canadian?? Daniel K. Hogan
The Hogan Firm

For Maryland Casualty Company: Jeffrey Wisler, Esq.
Connolly Bove

For the ACC: Mark T. Hurford, Esq.
Campbell & Levine

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For Burlington: Linda J. Casey, Esq.
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For the FCR:

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1 THE CLERK: All rise.

2 THE COURT: Good morning, please be seated. The
3 first matter is W.R. Grace, Bankruptcy No. 01-1139. I have
4 participants listed by phone: Scott Baena, Janet Baer, David
5 Blabey, Thomas Brandi, Elizabeth Cabraser, Linda Casey,
6 Elizabeth DeCristofaro, Martin Dies, Terence Edwards, Richard
7 Fink, Roger Frankel, Roger Higgins, Robert Horkovich, and
8 Charles Jurgens, Arlene Krieger, Peter Lockwood, David
9 Parsons, Adam Paul, John Phillips, Francine Rabinovitz,
10 Joseph Radecki, Alan Rich, Alan Runyan, Jay Sakalo, Alexander
11 Sanders, Darrell Scott, Jason Solganick, Gibson Solomons,
12 Daniel Speights, Shayne Spencer, Theodore Tacconelli, Edward
13 Westbrook, Jennifer Whitener, and Richard Wyron.

14 MS. BAER (TELEPHONIC): Good morning, Your Honor.
15 It's Janet Baer on behalf of . . . (indiscernible) in the
16 courtroom today . . . to proceed?

17 THE COURT: No, Ms. Baer they are, I'm sorry, I was
18 just having a computer issue so just give me one second,
19 please, and I'll take entries here in court.

20 MS. BAER (TELEPHONIC): Okay.

21 THE COURT: Okay, thank you, good morning.

22 MS. MAKOWSKI: Good morning, Your Honor. Kathleen
23 Makowski from Pachulski, Stang, Ziehl & Jones on behalf of
24 the debtors.

25 THE COURT: Good morning.

1 MR. HURFORD: Good morning, Your Honor. Mark
2 Hurford, Campbell & Levine, on behalf of the ACC.

3 THE COURT: Good morning.

4 MR. WISLER: Good morning, Your Honor. Jeffrey
5 Wisler on behalf of Maryland Casualty Company.

6 MR. HOGAN: Good morning, Your Honor. Daniel Hogan
7 on behalf of the Canadian . . . (indiscernible) claimants.

8 THE COURT: Okay, now, Ms. Baer, I'm ready for you,
9 thank you.

10 MS. BAER (TELEPHONIC): Thank you, Your Honor. Your
11 Honor, there's only one matter left on the agenda today which
12 is matter number 5 with respect to N.Y. Hillside, but prior
13 to taking up that matter, I just wanted to give the Court a
14 status on a few things which will be relevant as time goes on
15 in this case. First of all, I'm sure you're very well aware
16 District Judge . . . (indiscernible) ruled on January 31st of
17 this year . . . Since that time, Garlock Sealing
18 Technologies has filed a motion to alter and amend . . . has
19 filed what I would call a motion to ask the Judge to change a
20 few of his findings which were . . . filed a similar motion .
21 . . . filed a motion asking for an extension of time with
22 respect to the . . . appeal . . . and then finally, the bank
23 lenders have in fact filed a notice of appeal . . . we don't
24 know if there will be an appeal. It becomes somewhat
25 relevant, Your Honor, because of . . . then ask . . . what

1 are outstanding issues they have with respect to the
2 confirmation order and that would, of course, help in the
3 situation in terms of . . . on appeal. The . . . have . . .
4 with the plan from . . . Those documents, based on agreements
5 that are being documented now. We hope the final . . . and
6 then we would anticipate filing 9019 motions with the Court's
7 approval of those settlements. Approval of those settlements
8 will resolve all confirmation objections with both parties
9 and make the record a lot . . . Your Honor, with that status
10 report, I'd then like to take up the one contested matter on
11 the Court's agenda which is matter number 5, the matter of
12 N.Y. Hillside.

13 THE COURT: All right.

14 MS. BAER (TELEPHONIC): And, Your Honor, I am going
15 to ask that my partner Roger Higgins . . . that contested
16 matter . . . turn the podium over to him for this one.

17 THE COURT: All right, thank you. Mr. Higgins?

18 MR. HIGGINS (TELEPHONIC): Yes, good morning, Your
19 Honor. Roger Higgins for the debtors. The matter is the
20 debtors' objection to claim number 2114 of N.Y. Hillside.
21 Claimant is seeking payment of \$25,000 from the debtors.
22 This is an amount that, as we briefed in our objection and
23 supplemental objection, is an amount that -

24 THE COURT: Hello?

25 MR. HIGGINS (TELEPHONIC): - by a party called

1 Samson Hydrocarbon.

2 THE COURT: I'm sorry, I'm sorry, we're losing you.

3 Just a minute, please. Do we have a problem with the

4 speaker? Are you on a speaker phone, Mr. Higgins?

5 MR. HIGGINS (TELEPHONIC): I am not, Your Honor.

6 THE COURT: Okay. I think we're having a problem
7 here. Okay, if you could start again with the 25,000 claim
8 is what?

9 MR. HIGGINS (TELEPHONIC): N.Y. Hillside filed a
10 claim for payment of \$25,000 for alleged environmental
11 damages to certain properties. It has been already paid that
12 amount and by filing this claim by a non-debtor third party,
13 and by filing this claim N.Y. Hillside and its principal Mr.
14 Jurgens is seeking payment for a second time. The history of
15 this claim is a little bit tortured. In December of 2010,
16 the debtors filed an objection to the claim. Mr. Jurgens
17 responded to that objection and at the hearing of January 14,
18 the Court entered an order disallowing the claim, not on the
19 merits, on the basis that Mr. Jurgens, a non-lawyer, was
20 attempting to represent the corporation. The Court did give
21 Mr. Jurgens leave to file a claim transfer. It took quite a
22 few months, as we set forth in our supplemental objection, it
23 took quite a few months for Mr. Jurgens to comply with the
24 terms of Your Honor's order and with considerable assistance
25 from the debtors, and that led us to the Court entering an

1 order setting the matter for hearing for today. This is
2 really at its base an issue of Mr. Jurgens attempting to have
3 his cake and to eat it too. He received his \$25,000 on
4 behalf of Grace Petroleum Company and Grace Energy Company in
5 December 2001, an amount paid by Samson Hydrocarbons. Mr.
6 Jurgens has asserted that since he is entitled to payment not
7 only from Samson Hydrocarbons, which paid on behalf of the
8 debtors and Grace Petroleum Corporation, but also from the
9 debtors themselves, and that simply doesn't comport with the
10 facts which are fairly straightforward. At issue are certain
11 oil and gas leaks, which have been referred to as the subject
12 properties. These were once held by a former subsidiary of
13 Grace Energy called Grace Petroleum Corporation, or GPC. Mr.
14 Jurgens and N.Y. Hillside asserted in litigation that they
15 were owed for certain contamination on those subject
16 properties. GPC held those subject properties until April 30
17 of 1989 when it assigned them to an entity called Petro
18 Resources. At no time prior to that period did GPC's then
19 parent, Grace Energy, or its ultimate affiliate, W.R. Grace,
20 or any of the other debtors or non-debtor Grace affiliates
21 hold any interest in those subject properties. And after the
22 date, April 30th, 1989, GPC did not -

23 THE COURT: I'm sorry, we've lost you again. Hello?

24 MR. HIGGINS (TELEPHONIC): Yes, Your Honor?

25 THE COURT: I'm sorry, yes, every once in awhile for

1 whatever reason we're just losing the sound. After -

2 MR. HIGGINS (TELEPHONIC): Okay, let me - Is this
3 better, Your Honor?

4 THE COURT: I don't know. What happens is you just
5 - your voice just stops talking. So, I'm not sure what the
6 issue is. Where I lost you was, after April 30th, no debtor
7 had an interest in the properties and then you said that
8 after April 30 - and those were the last words I got.

9 MR. HIGGINS (TELEPHONIC): Yeah. Well, on the next
10 critical date to take note of, the December 30th, 1992, when
11 Grace Energy sold the stock of GPC or Grace Petroleum to an
12 entity called Samson Investments. GPC was subsequently
13 renamed Samson Hydrocarbons. The sale agreement, the stock
14 sale agreement included an indemnification clause which read
15 in relevant part that the debtors are to indemnify Samson
16 for, quote, "the environmental condition of any oil, gas, in
17 mineral leases and any other properties", end quote. That
18 indemnification, of course, was only for periods prior to
19 December 30th of 1992 because after that, obviously, neither
20 Grace Energy or Grace owned any of the stock of GPC. The
21 next relevant period starts in 1999 with Petro Resources,
22 which was the entity that purchased the subject properties
23 from GPC ten years earlier, filed a complaint against N.Y.
24 Hillside. In April of 2000, N.Y. Hillside filed a cross-
25 complaint against Grace and Grace Energy as well as several

1 other codefendants. On March 15, 2001, Grace and Grace
2 Energy filed joint responses to certain interrogatories
3 served by N.Y. Hillside. In relevant part, those responses
4 stated that neither Grace nor Grace Energy had ever owned,
5 operated, used, or held any property interest in the subject
6 properties. Of course, less than a month later, the Chapter
7 11 cases commenced. A suggestion of bankruptcy was sent to
8 N.Y. Hillside and then on July 15th, 2001, N.Y. Hillside added
9 Samson Investment as an additional codefendant on the basis
10 that it had purchased GPC's stock. This litigation was ended
11 in December of 2001 based upon a settlement whereby Samson,
12 Samson Investment and Samson Hydrocarbon paid \$25,000 to N.Y.
13 Hillside as compensation for the subject properties, and this
14 payment was in exchange for a release and this release is
15 pretty clear as we set forth in both our objection and our
16 supplemental objection. Claimant and other Hillside parties
17 fully and forever released and discharged all possible
18 interested parties from any and all claims, judgments,
19 losses, that pertained or referred to the past operations on
20 the subject properties, and that can only refer to operations
21 on the subject properties that occurred prior to April 30th,
22 1989 because after that time, either GPC, Samson Hydrocarbon,
23 Samson Investment, Grace Energy, or Grace itself had anything
24 to do with those subject properties. GPC and Grace Energy
25 and Grace were explicitly released as part of that release

1 from any and all liability. So on two bases, therefore,
2 Samson, by paying that \$25,000 to N.Y. Hillside took care of
3 any obligation whatsoever that the debtors could have had
4 whether it's Grace Energy, Grace, any other debtor, or GPC
5 itself could have had to Mr. Jurgens and N.Y. Hillside. But
6 Mr. Jurgens has ignored the settlement agreement's language
7 and also the facts of this matter to somehow assert that
8 Samson paid N.Y. Hillside for some time period other than the
9 one that he is seeking compensation from Grace Energy and
10 Grace for, but in fact, those time periods are exactly the
11 same time periods. So, therefore, Your Honor, we would ask
12 that the claim 2114 of N.Y. Hillside and Mr. Jurgens be
13 disallowed in its entirety.

14 THE COURT: All right. Mr. Jurgens?

15 MR. JURGENS (TELEPHONIC): This is Mr. Jurgens.

16 THE COURT: Yes, sir.

17 MR. JURGENS (TELEPHONIC): Good morning, Judge.

18 THE COURT: Good morning.

19 MR. JURGENS (TELEPHONIC): Unfortunately, Mr.

20 Higgins has facts not quite straight. The claim we had

21 against -

22 THE COURT: Can you turn that up, please.

23 MR. JURGENS (TELEPHONIC): - W.R. Grace's

24 activities on that property. They did not sign the release .

25 . . (indiscernible) the agreement, and they were not

1 released. The fact of the matter is that . . . several
2 companies and each of the other companies paid me the 25,000.
3 It's not as if one payment covers the entire obligation with
4 everybody. W.R. Grace, of course, was . . . because they
5 operated on the property and recognized that . . . relying on
6 a cleanup really affects every company that had any
7 involvement with the property. The release, of course, was
8 given to those who signed the agreement. Now, with respect
9 to trying to charge everybody, that is standard operations in
10 resolving environmental cleanup on properties. Now, in the
11 objections and my response to the supplemental objections, I
12 point out again that we're not trying to collect . . . we're
13 not trying to collect 25,000 . . . against W.R. Grace because
14 of what they've done on the property. Now, with respect to
15 the claim that Samson paid for Grace, there's absolute no
16 evidence of that all. There's nothing in the settlement
17 agreement, at the time of the settlement agreement, all the
18 parties were there, Samson never raised the issue of payment
19 to Grace, and in fact they shouldn't because they had not
20 assumed any obligations of Grace. Counsel just pointed that
21 out in the purchase agreement they took on no obligations.
22 They . . . coverage there. So that claim doesn't make any
23 sense. In addition, I think the document, document number
24 26025 where Samson responds to this issue in their affidavit
25 by Mr. Daniels (phonetical), he points out that Samson

1 participated in the settlement agreement for the purpose of
2 resolving any liability with cancer. Now the fact that he
3 added later on that . . . covers Grace, that is academic and
4 has nothing to do with Grace's obligation. This is an
5 obligation that Grace has for their operations on the
6 property and Samson acknowledges they entered into the
7 settlement agreement . . . obligations. So, that's perfectly
8 clear. I can't understand counsel's position. We're not
9 trying to collect . . . from the same parties. We're talking
10 25,000 from each party, and the fact of the matter is that in
11 the closing agreements and given the releases, no release was
12 given to W.R. Grace. It was only given to those who paid the
13 25,000 and obviously there were two or three companies that
14 paid the 25,000. So, we're not trying to collect, you know,
15 twice from the same people . . . And I think that's clear. I
16 don't understand Mr. Higgins' position on this at all, and
17 I'm sure that he's knowledgeable on cleanup matters that each
18 company that operated on or had any ownership on the property
19 settled those issues . . . in the future and that's what this
20 settlement agreement is about. The fact that Grace could not
21 participate in it because of their bankruptcy, that doesn't
22 take away their liability. So, I think it's clear, and I
23 ask the Judge to honor our claim and -

24 THE COURT: Mr. Jurgens?

25 MR. JURGENS (TELEPHONIC): Yes, I'm still here. I'm

1 looking at something for a minute.

2 THE COURT: Oh, okay.

3 MR. JURGENS (TELEPHONIC): Based on my facts I
4 request the claim for the 25,000 be approved.

5 THE COURT: Okay. Well, I have the settlement
6 agreement and the settlement agreement is pretty clear that
7 the stock of Grace Petroleum was sold to Samson Investment
8 and it also refers to the fact that Grace Energy and W.R.
9 Grace are both in bankruptcy, but that they have both
10 asserted under oath in the interrogatories that they had no
11 involvement in the subject properties other than through the
12 subsidiary of Grace Petroleum. The document goes on to say
13 that only one \$25,000 payment is necessary. In paragraph
14 (1.3), it indicates that each of the parties' payments of
15 25,000 are going to be allocated as follows, and then it sets
16 out the allocation schedule. In paragraph (2.1), which are
17 the releases, it says that Samson as well as their
18 predecessors in interest, successors in interest, partners,
19 subsidiaries, and affiliates, their present and former
20 officers, directors, employees' representatives, agents,
21 attorneys, assigns, nominees, shareholders, and all the
22 Samson-related parties are released from any and all claims
23 and obligations whether known or unknown, any causes of
24 action, anything anticipated or unanticipated, fixed or
25 contingent, which for retainer refer to any of the facts or

1 theories of relief that were or could have been alleged in
2 the cause of the action, and the document is signed on behalf
3 of New York Hillside and individually by you, Mr. Jurgens,
4 and also by Mr. Elrobie (phonetical), who was a partner. It
5 is clear to me that this document, the settlement agreement,
6 released Grace from all liability, released Grace Petroleum
7 and Grace Energy, and that Samson's payment was in fact on
8 behalf of itself and its predecessors and successors in
9 interest and that the release governs, and there is no
10 additional claim that can be sought from any of the Grace
11 entities as a result. Therefore, I'm going to sustain the
12 objection to the proof of claim and enter an order that will
13 indicate that the claim is disallowed.

14 MR. JURGENS (TELEPHONIC): Judge, Charles Jurgens.
15 I have to point out W.R. Grace is not a party of the
16 agreement. They did not sign that agreement and they've
17 never been released.

18 THE COURT: They have been, Mr. Jurgens. I'm sorry,
19 you're just incorrect. The settlement agreement indicates
20 that Samson was the successor in interest to these entities
21 and that in fact the payment by Samson was a release for all
22 of these entities including the entities who signed. This
23 document itself, which is part of the settlement indicates
24 that in fact W.R. Grace had no interest and no operations on
25 this property except through Grace Petroleum which was then

1 sold to Samson Energy, and you signed it, Mr. Jurgens,
2 individually and on behalf of the company.

3 MR. JURGENS (TELEPHONIC): Charles Jurgens, speaking
4 again. Excuse me, Judge. Yes, I did sign that, but W.R.
5 Grace did not sign that and I refer to the agreement in the
6 whereas's on page 3, Whereas W.R. Grace Corporation and W.R.
7 Grace are both presently in bankruptcy with a stay barring
8 further involvement in this action.

9 THE COURT: Yes, and the next paragraph - and the
10 next - Mr. Jurgens, I'm sorry. I'm not going to argue with
11 you. I've made my ruling. The next paragraph indicates that
12 Grace Energy Corporation and W.R. Grace have both asserted
13 under oath in response to interrogatories propounded by the
14 Hillside parties that their only involvement as an oil
15 operator on the subject property was through its subsidiary
16 named Grace Petroleum Corporation and the next paragraph
17 says, All of the capital stock of Grace Petroleum was sold to
18 Samson Investment, an unrelated corporation, in 1993 and then
19 explains the name change. It is clear to me that this
20 document governs all of the litigation and in fact, a
21 paragraph before the one you started reading indicates that
22 Grace Energy and W.R. Grace were part of the defendants in
23 the action. So the action was and could have been brought
24 against Grace to the extent that a proof of claim could have
25 been filed here and this claim was filed on behalf of New

1 York Hillside. I disallowed it earlier because of the
2 procedural issue. I'm disallowing it now on the merits based
3 on the fact that I have seen the settlement agreement. Ms.
4 Baer, do I have - can somebody submit an order that I can
5 use, please, for the reasons expressed on this record to
6 sustain the objection?

7 MS. BAER (TELEPHONIC): Yes, Your Honor, we will
8 submit an order to Your Honor in the next couple of days.

9 THE COURT: All right, thank you. Run it by Mr.
10 Jurgens, please. I believe you have contact information for
11 him; correct?

12 MS. BAER (TELEPHONIC): We do, Your Honor, and we
13 will send a draft to him before we send it to the Court for
14 entry.

15 THE COURT: All right, thank you. Okay that is, I
16 believe everything in Grace?

17 MS. BAER (TELEPHONIC): Your Honor, just one final
18 note. I just wanted to note that . . . (indiscernible) this
19 is my last appearance for W.R. Grace. I will be taking the
20 bench in Chicago on March 5th. I wanted to thank Your Honor
21 for your time and extreme patience over these last 10-12
22 years in this case. It's been really an incredible
23 experience and you've been an extraordinary judge. I hope I
24 can be half the judge that you in fact . . . in this case. I
25 also want to thank all of the counsel in the case. It has

1 been sometimes a very, very difficult case, but counsel has
2 always been the utmost of professional. My adversaries here
3 have become my colleagues and friends, and I wish everybody
4 the best of luck in completing this case. I will be watching
5 it very closely from Chicago and we just invite anybody to
6 come see us in Chicago at sometime. We do have a Bankruptcy
7 Court there, and we'd love to see everybody. And thank you
8 to everybody.

9 THE COURT: Well, I think congratulations are in
10 order for you, Ms. Baer, but I know for certain that my staff
11 is going to miss your good offices. You've done a fabulous
12 job just keeping all the parties aligned, if nothing else in
13 this case, and certainly everything you've done went far
14 beyond that and Mr. Higgins will have big shoes to fill. So,
15 congratulations. I'm glad to know that you'll be a colleague
16 in a different capacity in the future, and I'm sure that this
17 case will continue to be of interest to you as it goes
18 forward. All right, thank you.

19 MS. BAER (TELEPHONIC): (Indiscernible)

20 (The remainder of this page is intentionally left
21 blank.)

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1 THE COURT: All right, this case is adjourned, thank
2 you.

3 MS. BAER (TELEPHONIC): Thank you.

4 (Whereupon at 9:25 a.m., the hearing in this matter
5 was concluded for this date.)

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18 I, Elaine M. Ryan, approved transcriber for
19 the United States Courts, certify that the foregoing is a
20 correct transcript from the electronic sound recording of the
21 proceedings in the above-entitled matter.

22

/s/ Elaine M. Ryan
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February 29, 2012